



# STATE OF INDIANA

**MICHAEL R. PENCE, Governor**

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November 13, 2015

Mr. Mike Katz-Lacabe  
46 Estabrook Street  
San Leandro, California 94577

*Re: Formal Complaint 15-FC-255; Alleged Violation of the Access to Public Records Act by the Indiana State Police*

Dear Mr. Katz-Lacabe,

This advisory opinion is in response to your formal complaint alleging the Indiana State Police ("ISP") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et. seq.* ISP has responded to your complaint via Ms. Cynthia Forbes, Legal Counsel. Her response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on September 23, 2015.

## **BACKGROUND**

Your complaint dated September 19, 2015 alleges the Indiana State Police improperly denied your request for records.

Before August 25, 2015, you requested records related to FBI surveillance equipment from Harris Corporation – a vendor of such monitoring equipment, the related non-disclosure agreement between the FBI and Harris Corporation, any grant applications related to cellular tracking and monitoring, as well as related documents. ISP denied your records under Ind. Code § 5-14-3-4(b)(19).

You contend this denial is improper because you feel none of the requested records would "expose or disclosed detailed information related to 'the functioning and capabilities of equipment the department possesses.'" You note ISP previously provided a copy of a purchase order for a "cellular technology device" from Harris Corporation. You contend since ISP has already revealed it possesses this equipment, it cannot now refuse disclosure.



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On October 9, ISP responded. ISP states the records previously requested are distinguishable from the records requested here. ISP notes the previous purchase order

does not divulge the name of the device or any specifics about its capabilities. The records requested in this instance contain information which can be used to determine device capabilities. ISP also notes the letters between the FBI and Harris Corporation are the property of the FBI and are conspicuously marked as containing sensitive material.

ISP also contends Ind. Code § 5-14-3-6.5 also applies. The records received from the FBI are considered law enforcement sensitive. The APRA requires an individual agency maintain the confidentiality of records it has received.

## ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." See Ind. Code § 5-14-3-1. The Indiana State Police is a public agency for the purposes of the APRA. See Ind. Code § 5-14-3-2(m)(1). Accordingly, any person has the right to inspect and copy ISP's disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. See Ind. Code § 5-14-3-3(a).

ISP has raised two arguments against disclosure. ISP reasserts its denial under Ind. Code § 5-14-3-4(b)(19). This provision entitles a public agency to withhold records whose release may threaten public safety by exposing a vulnerability to a terrorist attack. ISP claims the records requested would provide detailed information related to the functioning of equipment and therefore compromise public safety.

You contend that because ISP has released a similar record the exemption is improper. This Office has held on numerous occasions that once a record which is subject to discretionary exemption is released that document cannot be protected again. However, ISP states the records previously requested as distinguishable from the records requested here. ISP notes the previous purchase order does not divulge the name of the device or any specifics about its capabilities. The records requested in this instance appear to contain information that can be used to determine device capabilities.

This Office has not been afforded (nor has it requested) the opportunity to inspect these records *in camera*. Therefore, I cannot state with absolute certainty whether the records



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you seek truly contain sensitive information. The materials marked as 'law enforcement sensitive' were generated and disseminated by the FBI to ISP on a need-to-know basis.

ISP has stated this information would fall under the Homeland Security Act as confidential. See 6 U.S.C. § 482. In turn, Ind. Code § 5-14-3-6.5 and Ind. Code § 5-14-3-4(a)(3) would apply if indeed applicable and would prevent the release of the letters from the FBI. Once again, this Office is not in a position to make that determination at this time. A court of law would be the better venue to issue a conclusive statement on the fact of the matter. To the extent you are dissatisfied with ISP's non-production, a trial court judge would have jurisdiction to review these materials *in camera* to ensure compliance.

In *Opinion of the Public Access Counselor 13-FC-278*, herein incorporated by reference, I urged ISP to disclose all information in relation to this purchase which could practically be released without jeopardizing public safety. My understanding is it undertook an audit of this information and eventually released certain materials accordingly. My recommendation in *Advisory Opinion 13-FC-278* stands, however, it remains unclear if there is any non-sensitive material left to release. I hereby reiterate that recommendation pursuant to this request as well.

## CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor the Indiana State Police has not violated the Access to Public Records Act.

Regards,

A handwritten signature in black ink, appearing to read "L. H. Britt", with a stylized flourish at the end.

**Luke H. Britt**  
Public Access Counselor

Cc: Ms. Cynthia Forbes, Esq.